

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1377-MN-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION,

Counter-Claimant,

v.

APPLE INC.,

Counter-Defendant.

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1378-MN-JLH

JURY TRIAL DEMANDED

MASIMO CORPORATION and
CERCACOR LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.,

Counter-Defendant.

PLAINTIFF AND COUNTERCLAIM-DEFENDANT APPLE INC.’S
RENEWED MOTION TO DISMISS AND STRIKE

On February 21, 2023, Plaintiff and Counterclaim-Defendant Apple Inc. moved to dismiss Defendant and Counterclaim-Plaintiff Masimo Corporation’s counterclaims and to strike certain of its affirmative defenses. D.I. 54 (-1377); D.I. 39 (-1378). On June 20, 2023, this Court issued its Report and Recommendation (the “R&R”), recommending that the motion be denied. D.I. 131 (-1377); D.I. 124 (-1378). Three days later, Judge Noreika granted Masimo’s motions for leave to amend, D.I. 136 (-1377); D.I. 130 (-1378), and denied Apple’s motions as moot, D.I. 139 (-1377); D.I. 133 (-1378). Since Masimo’s amended pleading did not materially change the theories that Apple moved to dismiss, Apple promptly filed an unopposed motion for this Court to reissue its R&R as applied to the amended counterclaims and defenses in both of the above-captioned matters so Apple could file narrow objections on just two particularly important points. D.I. 145 (-1377); D.I. 140 (-1378). That motion has not yet been resolved, and Apple’s response to Masimo’s amended counterclaims and defenses are due today, July 7, 2023.

Apple therefore renews its motions to dismiss and to strike, but only with respect to the two issues referenced in its motion to reissue the R&R so that the Court may reissue the R&R as applicable to this renewed motion and Apple can then promptly pursue its objections. ***First***, Apple moves to respectively dismiss and strike the inequitable conduct counterclaims and defenses insofar as they are premised on the alleged conduct of Apple’s Chief IP counsel and incorporates its prior briefing on this issue. *See* D.I. 55 at 11-18 (-1377); D.I. 88 at 4-9 (-1377); D.I. 40 at 16-20 (-1378); D.I. 76 at 9-10 (-1378). ***Second***, Apple moves to dismiss the monopolization, attempted monopolization, and California Unfair Competition Law claims premised on the “predatory infringement” and “monopoly leveraging” theories of liability and incorporates its prior briefing on this issue. *See* D.I. 40 at 7-9 (-1378); D.I. 76 at 4-6 (-1378). As

set forth in its unopposed motion to reissue the R&R, Apple seeks a disposition in line with cases that have foreclosed similarly non-viable antitrust theories at the motion to dismiss stage. *See* D.I. 145 (-1377), D.I. 140 (-1378) at 2 & n.1.

In addition to the foregoing, in support of its renewed motions, Apple expressly incorporates by reference the relevant portions of its prior briefing: D.I. 55 at 11-18 (-1377); D.I. 88 at 4-9 (-1377); D.I. 40 at 16-20 (-1378); D.I. 76 at 9-10 (-1378); D.I. 40 at 7-9 (-1378); D.I. 76 at 4-6 (-1378). Apple requests that the Court resolve these renewed motions by reissuing its R&R.

Respectfully submitted,
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